

of principle; it must be shown that the jury either misconceived the case, or acted under the influence of undue motives." Odg. Sland. & L. 291.

The claim of the defendant is that the sum is so large that the jury must have been influenced by prejudice, or have been improperly inflamed against the defendant. The jury evidently thought that so much of the mitigation as rested upon the fact that the article was published as received from a news agency in the usual course of business did not tend to mitigate the damages. The amount of punishment which they chose to inflict does not indicate to me that they acted from prejudice against or hostility to the defendant, but that they thought that the general principle or system upon which the testimony showed that its evening paper was conducted was a wrong and perilous system, and that any defendant who, in the course of his business upon that system, and as the result of it, published an article which would naturally cause great injury to a plaintiff, exposed himself to heavy damages.

The motion is denied.

### Appeal of BATTLE & Co.

(Circuit Court, E. D. Missouri, E. D. May 4, 1892.)

#### CUSTOMS DUTIES—CLASSIFICATION—"CHLORAL HYDRATE."

Under the tariff of October 1, 1890, chloral hydrate is dutiable at 25 per cent. *ad valorem*, under Schedule A, par. 76, as a "chemical compound \* \* \* not specially provided for," and not at 50 cents per pound, under paragraph 74, as a "medicinal preparation, \* \* \* of which alcohol is a component part, or in the preparation of which alcohol is used."

Application by Battle & Co., chemists, a corporation, for a review of the board of general appraisers' decision with respect to the classification of certain imports.

*Dickson & Smith*, for petitioners.

*Geo. D. Reynolds*, U. S. Atty.

THAYER, District Judge, (*orally*.) This is a case that arises under the customs law. The question in the case is whether chloral hydrate is dutiable at 50 cents per pound, under paragraph 74 of Schedule A of the tariff act of October 1, 1890, as "a medicinal preparation \* \* \* of which alcohol is a component part, or in the preparation of which alcohol is used," or whether it is dutiable at the rate of 25 per cent. *ad valorem*, under paragraph 76 of the same schedule, as "a chemical compound \* \* \* not specially provided for." The court is compelled to adopt the latter view, for the following reasons: Chloral hydrate is not mentioned by name in the tariff act, and in that sense it is not "specially provided for." Furthermore, all the experts agree that it is "a chemical compound." It answers, therefore, all of the requirements

of paragraph 76 of Schedule A. On the other hand, there are some grave objections to classifying it under paragraph 74 of Schedule A. In the first place, it may be said that alcohol is clearly not a component part of "chloral hydrate," because in the process of manufacturing the latter drug (when the alcohol process is employed) the alcohol is broken up into its constituent elements, and does not reappear in the drug, and cannot be extracted therefrom, as it may be when used merely as a solvent or to treat oils or other fatty substances. The case for the government rests on the fact that alcohol is used in one of the most common processes employed for manufacturing chloral hydrate; hence it is claimed that it is "a medicinal preparation \* \* \* in the preparation of which alcohol is used."

A very substantial objection to this view is that chloral hydrate may be, and sometimes is, manufactured by two processes from substances containing considerable starch, without the use of any alcohol. Chloral hydrate thus produced would certainly not be dutiable under paragraph 74, and the result of holding the present importation dutiable under that clause would be to impose a different rate of duty on the same drug, depending upon the process of manufacture. Another view of the case is also entitled to much weight. Considering the whole of paragraph 74, which reads as follows: "All medicinal preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, fifty cents per pound,"—it would seem as though congress in this clause only had in mind a class of medicinal preparations in which alcohol is used as an ingredient without being broken up, either as a solvent, or to extract and hold in solution the medicinal properties of certain vegetable substances or drugs. The use of alcohol in the manufacture of chloral hydrate bears no analogy to the uses last mentioned. The drug is manufactured in the alcohol process by passing dry chlorine gas through alcohol. By so doing, the alcohol is broken up chemically; a part of its hydrogen is liberated, and is replaced by atoms of chlorine. The process results in the formation of a solid substance of a crystalline structure, which is then treated with water to form chloral hydrate.

As before stated, other substances containing starch may be used in lieu of alcohol, to supply the elements necessary to form chloral hydrate. In view of the manner in which alcohol is treated in the process above described, the court considers it extremely improbable that chloral hydrate was one of the medicinal preparations which congress intended to make dutiable under paragraph 74 of Schedule A. Under the testimony, it is also doubtful whether chloral hydrate is, in a strictly legal or dictionary sense, "a medicinal preparation." In the form in which the present importation was made, it is clear that the article in question is not a complete medicinal preparation, for the reason that it cannot be administered in the form in which it was imported, but must be further prepared by the druggist or apothecary. While the case is not entirely free from doubt, I think, for the reasons above stated, that the article in

question should be assessed under paragraph 76 as "a chemical compound not specially provided for," and at the rate of 25 per cent. *ad valorem*. Judgment accordingly.

UNITED STATES *v.* McGRATH *et al.*

(District Court, E. D. Louisiana. May 11, 1892.)

No. 12,873.

CUSTOMS DUTIES—ENTRY UNDER BOND—WITHDRAWAL—ADDITIONAL DUTY.

Under Act Cong. Oct. 1, 1890, (26 St. at Large, p. 624,) § 50, goods deposited in bond prior to the date thereof, for which no permit of delivery has issued, and withdrawn before February 1, 1891, but after the above law went into effect, are not subject to the additional duty of 10 per cent. provided by Rev. St. U. S. § 2970.

At Law. Action by the United States against James McGrath & Son to recover the additional duty of 10 per cent. prescribed by Rev. St. U. S. § 2970, upon goods withdrawn from bond. Verdict directed for defendants.

*Wm. Grant*, for complainant.

*Gurley & Mellen* and *W. O. Hart*, for defendants.

BILLINGS, District Judge. The decisions by the treasury department as to the question involved in this case have not been uniform. It is a pure question of law, and arises from the following facts, which are undisputed: Merchandise was imported and entered in bond prior to the passage of the act of October 1, 1890, to wit, in November and December, 1889, and was withdrawn after the 6th day of October, 1890, and after one year, but within three years of the time when it was entered and deposited in a bonded warehouse, and before February 1, 1891. It had not been in the warehouse a year at the time the present law went into effect. The duties upon this merchandise were the same in the former and the present act, and were liquidated and paid without the addition of the 10 per cent. additional duty, which is provided for by section 2970 of the Revised Statutes. This suit is brought to recover that additional duty of 10 per cent. It may be stated also, as a fact, that no permit of delivery had been issued to the importer or his agent prior to October 6, 1890. If the statute of October 1, 1890, had not contained section 50, when we consider the public reasons against implied repeals of provisions imposing customs duties, there would have been presented a difficult question as to the effect of the general repealing clause contained in section 55, when taken in connection with the proviso contained in that section. But section 50 (26 St. p. 624) has made specific provision for the case of merchandise which had been entered in bond prior to the 6th of October, 1890, and subjects the duties upon all such merchandise to the effect of the general repealing clause. With this specific provision as to the duties upon goods already imported and in bonded warehouse, making them subject to no duties other than those